

DEPARTMENT OF STATE REVENUE

**SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 98-0361SLF
Sales and Use Tax
Calendar Years 1989, 1990, 1991, 1992, 1993, 1994, 1995, and 1996**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. Gross Retail Tax – Exempt Transactions of a Retail Merchant

Authority: IC 6-2.5-2-1(a); IC 6-2.5-4-5(c); 45 IAC 2.2-5-8(k)

Taxpayer protests the inclusion of wholesale sales subject to tax.

II. Tax Administration – Penalty

Authority: I C 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer is engaged in several seasonal business activities. During the summer the taxpayer sells fireworks from numerous Indiana locations. In the fall, the taxpayer operates a haunted house and sells Halloween costumes and supplies. The fireworks stores have several different names, the haunted house is operated under another name, and the costume sales, yet another. The taxpayer was previously registered to collect sales tax, then cancelled registration and still ran its business of selling its wares.

The audit included all wholesale sales in the assessment because the taxpayer had no records for these sales. The department does not know if these are actually wholesale. The auditor had requested this information on several occasions but no detail has been provided to date.

At rehearing on December 28, 1999 taxpayer stated it would send additional information regarding its exempt sales. On February 10, 2000, the hearing officer, in a letter, outlined taxpayer's and its

representatives' discussions regarding IC 22-11-14-4 that was brought up at hearing. Taxpayer was advised that it must have proof that the sales classified as wholesale sales were exactly that and that under IC 6-2.5-4-2(a), the wholesaler may accept from its customers properly executed exemption certificates in lieu of collecting sales tax on purchases. That is, provided the customers are registered as retail merchants and the purchases qualify for exemption. Taxpayer was asked to provide information such as exemption certificates, proof of out of state shipment, or other acceptable evidence within thirty days of February 10, 2000. Taxpayer was also advised that the rehearing letter of findings would be issued upon the expiration of the thirty days. A response was received on March 17, 2000 that did not provide additional information to allow an exemption for the sales at protest. Taxpayer cited IC 22-11-14-4 and IC 22-11-14-5, which have no bearing on the sales and use tax regulations. The department maintains its position as originally published in its letter of findings dated December 30, 1998.

FINDING

Taxpayer's protest is denied for both issues.